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November 22, 1999

David Waddell
Executive Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: Rulemaking Proceeding – Regulations of Certain Telemarketing
Practices – Rules 1220-4-11

Docket No. 99-00645

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of AT&T's Comments.

Sincerely,

A handwritten signature in cursive script that reads "Jim Lamoureux".
Jim Lamoureux

cc: all parties

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**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

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**IN RE: *Rulemaking Proceeding – Regulations of Certain Telemarketing
Practices – Rules 1220-4-11***

OFF. OF THE
EXECUTIVE SECRETARY

Docket No. 99-00645

**COMMENTS OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC.**

AT&T Communications of the South Central States, Inc. ("AT&T") submits the following Comments with respect to the Tennessee Regulatory Authority's ("TRA") Proposed Rules 1220-4-11, et. seq., entitled "Regulations of Certain Telemarketing Practices ("Proposed Rules"), pursuant to Tennessee Code Annotated, Section 65-2-102 and Chapter 478 of the Public Acts of 1999. On August 30, 1999, the TRA published a Notice of Rulemaking in the Tennessee Administrative Register, including proposed "Telemarketing Rules." A Rulemaking Hearing was set in the Notice for October 20, 1999, and was held before David Waddell, the Executive Secretary of the TRA and other members of the staff of the TRA. AT&T participated in the hearing. At the hearing, the deadline for filing written comments as to the Proposed Rules was set for November 22, 1999.

Section 1220-4-11-.01(21)—Definition of "Telephone Solicitation"

AT&T concurs with the Comments of the Tennessee Telecommunications Association ("TTA") that this section as currently drafted does not reflect the statutory definition of "telephone solicitation." In particular, the Proposed Rules do not reflect that

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the statutory definition of “telephone solicitation” does not include voice communications to current customers. AT&T suggests amending the definition set forth in the Proposed Rules in accordance with the recommendation of the TTA and BellSouth in order to properly reflect the definition of “telephone solicitation” set forth in the statute. In general, AT&T also recommends that the Proposed Rules properly reflect the language set forth in the statute as to all provisions.

Section 1220-4-11-.02(4)—Identification of ADAD Message Originator

AT&T concurs with the general comment of the TTA and BellSouth that the Proposed Rules should closely follow the language of current federal regulations in order to create a consistent body of regulations. Current federal regulations do not require that ADAD messages provide the name of the caller twice, once at the beginning of the call and again at the end of the call, as the Proposed Rules do. Accordingly, AT&T recommends replacing Rule 1220-4-11-.02(4) with the following language, which remains consistent with the intent of the statute while also allowing for consistency between Tennessee and federal regulations:

- (4) All telephone solicitations to residential subscribers shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents as well as meet the following requirements:
 - (a) ADAD messages must clearly state the name and telephone number of the person or organization initiating the call. The telephone number given must be answered during normal business hours by someone who is an agent of the person or organization on whose behalf the automatic call was made and who is willing and able to provide information concerning the automatic call.
 - (b) Live telephone solicitors must provide a telephone number at which the person or entity may be contacted.

Section 1220-4-11-.02(5)—Caller ID Block

AT&T does not recommend any changes to this section of the Proposed Rules. However, AT&T desires to clarify that this section does not impose on telemarketers the affirmative obligation to purchase equipment that would allow the passage of caller identification information. Tennessee statute clearly prohibits the use of equipment which ***blocks*** the passage of such information. However, there is no affirmative requirement to install equipment which would allow for the passage of such information. There is some equipment used by telemarketers that is not capable of passing through caller identification information. The rules should not be construed to require such telemarketers to upgrade their networks to purchase equipment that will allow the passage of such information. The rules should be limited to prohibiting the intentional use of equipment that blocks such information from being passed.

Section 1220-4-11-.02(6) and (7)—Prohibitions on LECs and IXC's

AT&T recommends deleting these sections in their entirety and replacing them with the following:

- (6) After notice and hearing, and upon finding that a telemarketer is in violation of this Chapter, the Authority may issue an order prohibiting local exchange carriers and/or interexchange carriers from providing telecommunications service to such telemarketer.

As written, the Proposed Rules would require local exchange carriers and interexchange carriers to police their customers' use of ADAD equipment and Caller ID practices and to unilaterally enforce the provisions of the Proposed Rules by terminating service to their customers. Such a requirement is inappropriate. Responsibility for enforcing the Proposed Rules should not be delegated to LECs or IXC's. Moreover, such enforcement would be practically impossible. LECs and IXC's have no greater ability than

the TRA or any other enforcement agency to determine whether their customers are properly using ADAD equipment or properly following Caller ID procedures. Responsibility for enforcement of the Proposed Rules should remain with the Authority and other appropriate State agencies.

Section 1220-4-11-.10(1)—The Do Not Call Register

Consistent with federal regulations, AT&T recommends amending this Section to add the following:

The Authority shall also maintain the date of each election not to receive telephone solicitations. A do not call election must be honored for 10 years from the time the request is made.

Section 1220-4-11-.11(2)(a)—Contents of the Register

AT&T recommends amending this Section to read as follows:

- (a) The name, address and telephone number(s) of Tennessee residential subscribers electing to not receive telemarketing calls.

As written, the Proposed Rules include only subscriber telephone numbers on the Register. In order for telemarketers to update records effectively, the Register also should include the name of the subscriber, as well as the phone number. The intent of the statute is to protect consumers who do not wish to receive telephone solicitations, not to protect *telephone numbers*. Consumers and telephone numbers are not permanently connected to one another. In order to properly ensure that their internal “do not call lists” are accurate, telephone solicitors require access not only to telephone numbers, also to other consumer identifying information. Thus, if a customer moves and obtains a new telephone number, such information will assist in protecting the “new owner” of the telephone number from being improperly to the “do not call list.”

Section 1220-4-11-.13(2)—Publication in White Pages Directory

AT&T recommends amending 1220-11-.13(1) as follows to reflect that not all local exchange carriers publish telephone directories:

- (2) All local exchange carriers who publish a telephone directory, either directly or through an affiliate, working in cooperation with the division, are required to place information on how to subscribe to the Register in their White Page telephone directory. The notification in the directory shall include an application to the Register.

Section 1220-4-11-.14(1)—Violations of Do Not Call Register

AT&T recommends amending 1220-4-11-.14(1) as follows:

- (1) It is a violation of Chapter 478 of the Public Acts of 1999 and of this Rule Chapter for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that appeared in the copy of the Register that was available ninety (90) days prior to the time the telephone solicitation was made.

Telephone solicitors realistically require 60 days from the release of the most recent Do Not Call list to stop calling a specific consumer. This timeframe allows the telephone solicitor 30 days to receive the newly updated file and remove the consumer's telephone number from all calling lists being used for calling. An additional 30 day window is required to complete consumer contacts for telemarketing call lists selected prior to register updates. The proposed amendment, therefore, allows telephone solicitors a reasonable timeframe to perform the data processing necessary to comply with the proposed rules.

In addition, AT&T recommends incorporating language in Section 1220-4-11-14(1) as follows:

- (d) It shall be an affirmative defense in any proceeding brought under this regulation that the respondent has established and implemented reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations established in this Section.

Errors (human and computer) can occur despite the best efforts to comply. This provision allows a safe harbor for telephone solicitors who have made good faith efforts to comply with the Proposed Rules.

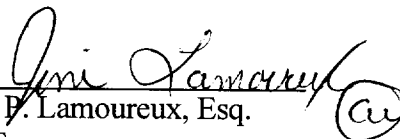
Section 1220-4-11-.14(3)—Liability for Independent Contractors

AT&T recommends amending Rule 1220-4-11-.14(3) as follows:

- (3) Telephone solicitors shall be held responsible for violations of this Rule Chapter by their independent telephone solicitor contractors. It shall be a defense in any proceeding brought under this Rule Chapter that the telephone solicitor has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Rule Chapter.

Once again, this provision allows for the reality that errors can occur despite best efforts. A telephone solicitor should not be held strictly liable for the actions of its independent contractors if the telephone solicitor has implemented appropriate practices and procedures to ensure compliance by the independent contractor with the Proposed Rules.

Respectfully submitted,


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Attorney for AT&T Communications
of the South
Central States, Inc.

November 22, 1999

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 1999, a copy of the foregoing document was served on counsel for the petitioner and the entities seeking intervention, via the method indicated, addressed as follows:

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

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☒ Mail
☐ Facsimile
☐ Overnight

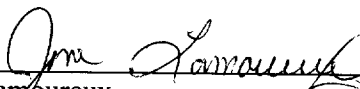
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